



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.241/LKW/2019
Assessment Year: 2011-12

The Sub-Registrar, Kasia Tehsil Compound, Kasia, Kushinagar	v.	The Director of Income Tax (I&C) Lucknow
TAN/PAN:ALDSO5094F		
(Appellant)		(Respondent)

Appellant by:	Shri A. P. Sinha, Advocate		
Respondent by:	Shri Harish Gidwani, D.R.		
Date of hearing:	28	03	2022
Date of pronouncement:	05	04	2022

ORDER

PER A.D. JAIN, V.P.:

This is assessee's appeal against the order of the ld. CIT(A), Gorakhpur, dated 3.1.2019, for Assessment Year 2011-12.

2. There is a delay of three days in filing of this appeal. As per the affidavit of Shri Sant Kumar Rawant, the assessee Sub-Registrar, we find that there was sufficient cause for delay in filing of the appeal. Accordingly, we condone the delay and admit this appeal for hearing.

3. As per the ld. Counsel for the assessee, the issue is as to whether appeal before the ld. CIT(A) is maintainable against the penalty levied under section 271FA of the Income Tax Act, 1961, for failure to furnish annual information return. The ld. CIT(A) says that the subject matter of the appeal pertains to the order

passed under section 271FA of the I.T. Act by the Director of the Income Tax (I &CI), Lucknow; that there is no enabling provision under the I.T. Act under which an appeal filed against the said order can be adjudicated by the Commissioner (Appeals); and that as per the list of appealable orders under section 246 and 246A of the I.T. Act, the said order is not appealable before the undersigned; and that the assessee is directed to file the appeal before the appropriate authority designated for adjudicating such appeals.

4. The Id. D.R., supporting the order under appeal, has stated that the orders appealable before the Id. CIT(A) have been specified in Section 246A of the I.T. Act; and that however, no appeal against an order passed under section 271fA of the I.T. Act has been provided for.

5. In this regard, it has been pointed out, and correctly so, by the Id. Counsel for the assessee, that Section 246A (1)(q) of the I.T. Act specifically provides for appeals to be maintainable before the Id. CIT(A) against the orders levying penalty under Chapter XXI of the I.T. Act. Section 246A(1)(q) reads as follows:

*“246A. Appealable orders before Commissioner (Appeals).—
(1) Any assessee aggrieved by any of the following orders
(whether made before or after the appointed day) may
appeal to the Commissioner (Appeals) against—
xx
xx
(q) an order imposing a penalty under Chapter XXI”*

6. Section 271FA of the I.T. Act is contained in Chapter XXI of the Income Tax Act. Therefore, section 246A (1)(q) of the I.T. Act is squarely applicable to section 271FA. Meaning

thereby, that by necessary implication, orders passed under section 271FA of the I.T. Act are appealable before the ld. CIT(A). Reference, if any is required in this regard, may be had to:

- i. 'Filmcity Media Limited vs. Director of Income Tax (CIB)', order dated 28.8.2014, passed by the Mumbai F Bench of the Tribunal, in ITA No.6040/Mum/2012, for Assessment Year 2009-10 (copy filed) and;
- ii. 'Director of Income Tax (CIB) vs. Ravi Vijay & Another' (S.B. Civil Writ Petition No.11458/2011) and 'Director of Income Tax (CIB) vs. Balu Ram & Another' (S.B. Civil Writ Petition No.11914/2011), passed on 9.7.2012, by the Hon'ble Rajasthan High Court (copy filed).

7. The order under appeal before us is dated 3.1.2019. The provisions of section 246A (1)(q) were inserted in the Statute Book with effect from 1.10.1998. Therefore, this provision was on the Statute Book at the time of passing of the impugned order.

8. Thus, it is incorrect to say, as has been held by the ld. CIT(A), that there is no enabling provision in the I.T. Act, under which, an appeal filed against an order passed under section 271FA of the I.T. Act can be adjudicated by the ld. CIT(A). As observed in the preceding paragraph, appeals against orders passed under section 271FA of the I.T. Act are appealable before the ld. CIT(A), under section 246A(1)(q) of the I.T. Act.

9. In view of the above, the matter is remitted to the file of the ld. CIT(A), to be decided afresh, on merits, in accordance with law, on providing due and adequate hearing to the assessee. The ld. CIT(A) shall pass the order within a reasonable time,

preferably within a period of two months from the date of receipt of this order.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05/04/2022.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:05/04/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar